

REMARKS

Applicant requests reconsideration and further examination of this application.

Regarding Claims 10 and 12:

Applicant appreciates the indication that Claims 10 and 12 are allowable if rewritten in independent format and with the limitations of the base and any intervening claims. Applicant has amended the limitations of original Claims 1 and 9 into Claim 10, and original Claims 1 and 11 into Claim 12, except that Applicant has removed the word “means” from these claims. This has been done to remove language from the claims that might be construed as “means plus function” under 35 U.S.C. Section 112, sixth paragraph. Thus, Applicant clarifies that the term “recess” as used in Claims 10 and 12 includes the recesses illustrated and/or described in the instant application but also other recesses not specifically illustrated or described in the application. Applicant also has added the phrase “in the fully assembled fencing” to Claims 10 and 12, for consistency with the amendment made to Claim 1 (as discussed below), even though the Examiner has indicated that this feature is not necessary to confer patentability upon Claims 10 and 12.

Regarding Claims 1 - 9 and 11:

The Examiner relies upon prior art document US 5,660,378 (Schall) to argue that Claim 1, and also Claims 2-9 and 11 are not novel. Schall discloses a fence which can be assembled from separate rails and pickets (fence members), the assembly suitably being carried out on site. Schall does not, however, disclose vertical fencing which is “self adjusting” defined as “a fence section in which the fence members can pivot relative to the rails” (second paragraph of page 2 of the present application). As set out, “self-adjusting” vertical fencing allows the fence members to pivot relative to the rails so that

the fence members can remain vertical whilst the rails are not horizontal but follow the contours of the ground upon which the fence is erected.

Claim 1 as presently worded specifies that the vertical fencing is “self-adjusting”, by stating that the fence members are pivotable relative to the rails. To clarify this limitation of Claim 1, it has been amended to include the phrase “in the fully assembled fencing” after the phrase “the fence members being pivotable relative to the rails”. Support for this amendment to Claim 1 is located at page 8 lines 20-24, at page 11 lines 35-37, and at page 12 lines 20-24 of the application as filed, for example. The Examiner will note that the whole of the present application is directed to “self-adjusting” fencing in which the fence members can pivot relative to the rails in the assembled fence, but these portions of text specify selected embodiments of the preferred pivotable arrangement in detail.

The Examiner states that Schall includes the feature that the fence members are pivotable relative to the rails due to play between [fence member] 1 and [rail] 11 that is present prior to the Fig.2 engagement of the [insert] 21 within [recess] 19. That is apparently a correct interpretation of the disclosure of Schall, but represents the situation of a partially-assembled fence, as compared to the fully assembled fence to which Claim 1 is directed. The amendment made to Claim 1 clarifies that the Applicant’s fencing is pivotable in the fully assembled condition, and so clarifies the distinction over Schall.

The non-pivotable arrangement of the Schall disclosure is confirmed by Figs. 4,6 and 7 of that document which show the fence member projecting through an opening in the rail. In order to be pivotable when assembled, the opening would have to be extended in the direction of pivoting movement. No such extension is shown in the drawings, or referred to in the description (no extension of the opening is shown or described because an extension is not required by Schall since the fence members are not required to pivot relative to the rails in the assembled fence).

Accordingly, Schall discloses a non-pivoting, or non-adjusting, vertical fence and is therefore technically unrelated to the self-adjusting fence to which the present application is directed. The clear distinction between the types of fence concerned has been clarified by the amendment made to Claim 1.

Applicant has amended Claims 1 - 3, 5, 6 and 11 to remove the word "means" to remove language that might be interpreted as "means plus function" under 35 U.S.C. Section 112, sixth paragraph. Thus, Applicant clarifies that the term "recess" as used in Claims 1 - 9 and 11, includes the recesses illustrated and/or described in the instant application but also other recesses not specifically illustrated or described in the application.

In addition, the Applicant has added new Claims 13 - 16, directed to the form of the opening in the rail, and, in particular, that the opening is elongated to permit pivoting movement of the fence member relative to the rail. New Claims 13 - 15 (dependent upon Claims 1, 10, and 12) and Claim 16 (independent) define the structure of certain types of rail adapted for a pivoting or self-adjusting fence, and are distinguished from the disclosure of Schall for the reasons explained above. Support for the new Claims 13 - 16 is to be found at page 9 line 36 to page 10 line 2, and at page 12 lines 20-24 of the application as filed, for example.

The Examiner's objections to dependent Claims 2-9 and 11 have been overcome by the amendment made to Claim 1.

Applicant now believes the application is in condition for allowance and respectfully requests the same.

Respectfully submitted,

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